IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

TRC.No. 136 of 2003

TA.509/1997 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, THIRUVANANTHAPURAM
.....

REVISION PETITIONER/ASSESSEE

V.UDAYAN,
PRESANTHI PAPER MART,
ADOOR,PATHANAMTHITTA DISTRICT.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENT/REVENUE:

STATE OF KERALA.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS TAX REVISION CASE HAVING COME UP FOR ADMISSION ALONG WITH TRC 137/2003 ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

T.R.C.Nos.136 & 137 of 2003

Dated, this the 2nd day of August, 2007

ORDER

H.L.Dattu, C.J.

These revision petitions are filed by the assessee, being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.Nos.509 and 510 of 1997 for the assessment years 1991-92 and 1992-93.

(2) The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act, 1956. He is a dealer in paper at Adoor. In the returns filed for the assessment year 1991-92, the assessee had declared his total turnover in a sum of Rs.85,000/- and for the assessment year 1992-93 in a sum of Rs.1,10,550/-. The assessing authority had not accepted the returns so filed by the assessee and, therefore, had issued a pre-assessment notice directing the assessee to produce the books of accounts before him for quantification of the tax liability. At this stage, it is relevant to notice that even before completion of the assessments, the business premises of the assessee was inspected by the Intelligence Officer of the Department on two or three occasions. After such inspection he had reported the same to the assessing authority by furnishing his findings after inspection. Keeping in view the report of the Intelligence Officer of the Department, the assessing authority after rejecting the returns filed and the books of accounts produced by the assessee, has proceeded to pass a best judgment assessment.

(3) The assessee being aggrieved by the orders of assessment so passed by the assessing authority, had filed appeals before the first appellate

authority. The first appellate authority by his order has modified the orders of assessment and has directed the assessing authority to reduce the suppression quantified by him at two times to 1 ½ times.

(4) Not being satisfied with the orders so passed by the appellate authority, the assessee had carried the matter in second appeal before the Tribunal. The tribunal after noticing the contentions canvassed by the assessee's representative and being convinced that the best judgment assessments have been passed by the assessing authority based on the report of the Intelligence Officer of the Department, and further being of the opinion that the findings and conclusions reached by the assessing authority as well as the first appellate authority are neither perverse nor illegal, has proceeded to confirm the orders passed by the first appellate authority. Aggrieved by these orders, the assessee is before us in these tax revision cases.

(5) The assessee has raised the following questions of law for our consideration and decision. They are as under:

> "A. Whether, on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in confirming the rejection of accounts and estimation of turnover?
>
> B. Whether, on the facts and in the circumstances of the case, is not the estimation of turnover on the basis of average running stock made by the assessing authority illegal and arbitrary?
>
> C. Is not the turnover estimated and sustained by the Appellate Tribunal, excessive and arbitrary and having no nexus with the variations or defects pointed out?"

(6) In exercise of our powers under Section 41 of the Kerala General Sales Tax Act, we can interfere with the orders passed by the Tribunal, if the Tribunal has failed to decide the questions of law or has erroneously decided

the questions of law.

(7) In the instant case, estimation is made by the assessing authority based on the report of the Intelligence Officer of the Department and that estimation is modified by the first appellate authority. The estimation, as we have already noticed, is based on the report of the Intelligence Wing of the Department. The decision that is rendered by the Tribunal is purely on the facts found in the assessment records. As such, no question of law would arise for consideration and decision of this Court. Therefore, we decline to exercise our jurisdiction under Section 41 of the Kerala General Sales Tax Act. Accordingly, while confirming the orders passed by the Tribunal, the revision petitions filed by the assessee requires to be rejected and accordingly it is rejected.

Consequently, C.M.P.Nos.2542 and 2543 of 2003 are also dismissed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

vns/dk